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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,969	01/27/2000	Ronald Spangler	ACX-128	9298

7590 10/05/2004

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16750 Via Del Campo Court
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San Diego, CA 92127-1712

EXAMINER

TRINH, MINH N

ART UNIT	PAPER NUMBER
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3729

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 40-54 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: that Inventions are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination of the invention originally claimed does not required a strain element having a piezoelectric or electro restrictive plate, shell, fiber or composite and the strain element and the conductor are to be mounted in a housing forming a protective body about the strain element, etc., as required by each of the newly submitted claims 40-49 and the similar subject matters as recited in section (a) of claims 50-54. The subcombination has separate utility such as it has utility by itself such as by forming a protective body about the strain element together forming a flexible actuator assembly, etc or in other combinations other than the invention as originally claimed. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 40-54 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

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2. This application is in condition for allowance except for the following formal matters:

In the claims:

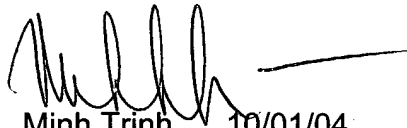
- a) "The" (claim 4, line 1) should have been changed to: --A--.
- b) "An" (claims 25-26, line 1) should have been changed to: -- A--.
- c) Non elected claims 10, 24, 27-29, 33-35, 38 and 39-54 should have been cancelled.

Further, Applicants should carefully revise the disclosure as outlined above and also correct other typographical errors in the claims, which were not noticed to clearly recite the claimed invention.

3. Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh Trinh whose telephone number is (703) 305-2887. The examiner can normally be reached on Monday -Thursday 8:00 am to 4:30 pm..


Minh Trinh 10/01/04
Primary Examiner
Art Unit 3729

10/01/04
mt